The City of New York

POLICE DEPARTMENT

In the Matter of the Disciplinary Proceedings	:	
- against -	:	FINAL
Police Officer LaSean Wiggins	:	ORDER
Tax Registry No. 940856	:	OF
Administrative Support Division	:	DISMISSAL

Police Officer LaSean Wiggins, Tax Registry No. 940856, Shield No. 11415, Social Security No. ending in [redacted] having been served with written notice, has been tried on written Charges and Specifications numbered 2014-11090, as set forth on form P.D. 468-121, dated January 3, 2014 , and after a review of the entire record, has been found Guilty as Charged.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer LaSean Wiggins from the Police Service of the City of New York.

WILLIAM J. BRATTON
POLICE COMMISSIONER

EFFECTIVE:

The City of New York

POLICE DEPARTMENT

May 6, 2015

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2014-11090
Police Officer Lasean Wiggins	:	
Tax Registry No. 940856	:	
Administrative Support Division	:	

At: Police Headquarters
One Police Plaza
New York, New York 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner - Trials

APPEARANCE:

For the Department: Daniel Maurer, Esq.
Department Advocate's Office
One Police Plaza
New York, New York 10038

For the Respondent: Charlie A. Vargas, Esq.
Brown & Associates
26 Court Street, Suite 808
Brooklyn, NY 11242

To:

HONORABLE WILLIAM J. BRATTON
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

The above-named member of the Department appeared before me on December 8, 2014, charged with the following:

1. Said Police Officer LaSean Wiggins, assigned to Police Service Area 9, on or about July 9, 2012, utilized a Department computer, a Mobile Digital Terminal, to make a computer query of an individual whose identity is known to the Department and said query was not related to the official business of the Department.

P.G. 219-14, Page 1, Paragraph 2 - DEPARTMENT COMPUTER SYSTEMS

2. Said Police Officer LaSean Wiggins, assigned to Police Service Area 9, on or about and between August 17, 2011 and December 31, 2013, knowingly associated with two individuals whose identities are known to the Department who are reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2(C) - GENERAL REGULATIONS

3. Said Police Officer LaSean Wiggins, assigned to Police Service Area 9, on or about December 31, 2013, after having been directed by Sergeant Marc Klausner, Internal Affairs Bureau, to submit to a drug screening test for cause, refused to comply with said lawful order.

P.G. 203-03, Page 1, Paragraph 2 - COMPLIANCE WITH ORDERS
P.G. 205-30, Page 2, Paragraph 11 - DRUG SCREENING TESTS FOR CAUSE

4. Said Police Officer LaSean Wiggins, assigned to Police Service Area 9, on or about May 4, 2013, while serving in the United States Army, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department in that, pursuant to submitting to a drug screening test, Police Officer Wiggins tested positive for marijuana.

P.G. 203-10, Page 1, Paragraph 5 - PROHIBITED CONDUCT

5. Said Police Officer LaSean Wiggins, assigned to Police Service Area 9, on or about December 23, 2013 and December 30, 2013, after having been contacted and/or questioned by the Federal Bureau of Investigation regarding his involvement role or participation with subjects in a federal investigation, Police Officer Wiggins failed to notify the Department as required.

P.G. 212-32 - OFF DUTY INCIDENTS INVOLVING UMOS
P.G. 207-21 - ALLEGATIONS OF CORRUPTION AND OTHER MISCONDUCT

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and Respondent was represented by Charlie A. Vargas, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Detective Clyde Fernandes and Sergeant Marc Klausner as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of the witnesses and hearsay declarations, this Tribunal finds Respondent Guilty of all charges. On the witness stand, Respondent admitted to (i) using a Department computer to run a search of an individual whose identity is known to the Department where said query was not related to official business of the Department; (ii) refusing to comply with an order to submit for drug testing; (iii) testing positive for marijuana, pursuant to a drug screening test, while serving in the United States Armed Forces; and (iv) failing to notify the Department after having been questioned by the Federal Bureau of Investigation regarding his association with two individuals who were subjects of a federal investigation.

Furthermore, by a preponderance of credible evidence it was established that Respondent knowingly associated with two individuals, Person A and Person B Johnson, whose identities are known to the Department and who are reasonably believed to be engaged in or have been engaged in criminal activities.

FINDINGS AND ANALYSIS

The following facts are undisputed. Respondent has been a member of the United States Army since 2002. In 2005, Respondent left full-time active military duty, became a Reserve member, and joined the Department as a Police Officer in January 2006. (Tr. 107-08).

Respondent's last military tour was in Afghanistan, where he was stationed for nine months in 2013. While on active duty in Afghanistan, Respondent was ordered to submit to a urine drug test on May 4, 2013, after a small bag containing marijuana was found in the bunk he shared with one other individual. (Tr. 20). Respondent subsequently tested positive for marijuana.[1] (*Department's Exhibit 1*). Respondent's bunkmate tested negative. (Tr. 198). Thereafter, Respondent opted for an Article 15 administrative disciplinary proceeding where the facts and findings stay within the military and are not made part of any public record, instead of a court-martial proceeding where the record would be public and a guilty verdict would result in a dishonorable discharge from the military. (Tr. 176-78). Respondent pled guilty to wrongful use of marijuana and, on May 27, 2013, received (i) a $1,200.00 penalty, paid to the Army; (ii) an additional twenty-one (21) days added to his tour, and (iii) a demotion in rank and pay grade from E-5 (military police) to E-4 (specialist). (Tr. 22, 124-25). Following this incident, Respondent contacted a Patrolman Benevolent Association (PBA) delegate but did not inform the Department of the incident. (Tr. 116-17). Respondent was honorably discharged from active duty in July 2013. (*Respondent's Exhibit C*).

Upon his return, Respondent did not expressly notify the Department of his change in rank and pay grade, although the same was noted on a DD-214 Form, which

[1] The Department has made efforts but was ultimately unable to obtain the drug test packet. (Tr. 23).

Respondent presented to the Military and Extended Leave Desk, as required, upon his return. (Tr. 129-30). A DD-214 Form is a standard military form that confirms that a service member is no longer on active duty. The form, however, did not outline or reference the circumstances surrounding Respondent's demotion. (*See RX-C*). Respondent testified that he brought back no documentation relating to the drug testing incident upon his return to the United States because it had been a stressful experience that he wanted to forget upon leaving Afghanistan. (Tr. 119).

As to association, Respondent testified to having known Persons A and B, the subjects of a federal investigation, for several years, having met when they were all teenagers growing up in the same neighborhood where they still live today. (Tr. 139, 144, 182). On several occasions, Respondent has exchanged text messages with Persons A and B. These messages were the impetus for the FBI investigation of Respondent. (Tr. 183).

Respondent further testified that he had heard that Person B had been arrested but never confirmed with Person B directly. (Tr. 141). Respondent admitted to running an unauthorized search in 2011 using a Department computer after "overhearing" Person B talk about a summons and subsequently informing Person B that the summons had cleared. (Tr. 143). In 2012, by his own admission, Respondent ran a search of Person A through a mobile digital terminal. Respondent testified that he did so, without being asked, after Person A told Respondent that he was uncertain if his license was suspended. (Tr. 145-46). Respondent thereafter confirmed with Person A that his license was, in fact, suspended.

Agents from the FBI's C-14 corruption unit came across Respondent's name on a wiretap related to Person A and Person B, who were being investigated for drug activity and

association with organized crime individuals. (Tr. 14). When Respondent's name came up on the wiretap, federal agents contacted the Department's Internal Affairs Bureau (IAB) and the Department thereafter commenced its own investigation. (Tr. 13-16).

Federal agents attempted to directly contact Respondent by phone on December 23, 2013, by leaving a voicemail message and callback number. (Tr. 17). Respondent testified that he listened to the message after his wife informed him of it, but did not return the phone call and did not notify the Department that the FBI had attempted to reach him because he believed the message to be a prank. (Tr. 191-92).

Federal agents then visited Respondent at his residence on December 30, 2013. He was questioned about his association to Persons A and Bs for approximately an hour and confirmed that they were childhood friends from his neighborhood with whom he sometimes exchanged text messages. (Tr. 148-53). He also admitted that he had been present at Person B's residence on an occasion where individuals had been smoking marijuana. (Tr. 161, 194). The timing of this event, however, is disputed.

When the FBI agents departed, Respondent did not contact IAB or anyone at the Department to inform them that federal agents had just visited his residence. (Tr. 191). Two members of IAB, having been informed by FBI agents of the questioning, arrived at Respondent's residence approximately three hours later to confiscate his firearm and shield. (Tr. 58, 157).

The following day, December 31, 2013, Respondent was placed on modified assignment. (Tr. 164). As he was leaving One Police Plaza, Sergeant Klausner of IAB informed Respondent that he needed to come with him to submit to a Dole test. In the vehicle, Respondent became agitated and upset discussing the FBI's visit to his home.

(Tr. 96, 166). With regard to the Dole test, Respondent eventually told Klausner, "with all due respect, I'm not going to do that." (Tr. 93). Klausner encouraged the Respondent to submit to the test and Respondent refused. (Tr. 93, 195).

Klausner then called his Commanding Officer, Sergeant Clarinio, who thereafter contacted the Chief of Internal Affairs, Chief Campisi. Clarinio then directed Klausner to suspend Respondent under the authority of Campisi. (Tr. 93). Klausner once again attempted to persuade Respondent to take the test and warned him that he would be suspended if he did not do so. (Tr. 94, 195). When Respondent again declined, Klausner suspended him for failure to take a drug test for cause.

Specification No. 1: Unauthorized Use of Department Computer

Respondent admits to running a search for Person A using a Department computer on July 9, 2012, to determine whether Person A's license had been suspended. Said query was unrelated to any official Department business. Such action is directly contrary to Patrol Guide 219-14, which provides that Department computer systems are to be used only to "make official inquiries, which relate to official business of the Department." *(P.G. 219-14, Page 1, Paragraph 2).*

Accordingly, Respondent is found guilty of the charge set forth in Specification No. 1.

Specification No. 2: Criminal Association

The second specification alleges that Respondent knowingly associated with two individuals, Person A and Person B, who are reasonably believed to be engaged in, likely to

engage in, or to have been engaged in criminal activities. Respondent argues that the Department has failed to prove that Respondent was aware of their criminal activity and prior convictions. (Tr. 234). The Department asserts that Respondent had reason to believe these individuals were engaged in criminal activity and chose not to inquire further because these individuals were his friends with whom he intended to keep associating with.

Respondent testified that he has known Person A and Person B for several years and that he became friends with them while growing up in the same neighborhood. (Tr. 139, 183). He admits that they lent each other money over the years and that they exchanged text messages on multiple occasions. (Tr. 183).

Further, Respondent admitted to running unauthorized Department computer searches of both individuals, as discussed above. (Tr. 143-46). I find there is no other explanation as to why Respondent would violate Department policy by running these searches other than that he was doing a favor for his friends.

Respondent admitted to having been present at Person B's home on an occasion where other individuals were smoking marijuana. The date of this occurrence, however, is disputed. Detective Fernandes testified that he was told that Respondent admitted to federal agents that he was at Person B's home when other people present were smoking marijuana approximately two weeks prior to the federal questioning on December 30, 2013. (Tr. 18, 87). Fernandes did not denote an exact date or reference the two week timeframe in his report. (*Respondent's Exhibit A*). Respondent contends that he never provided a timeframe of two weeks and is unable to recall exactly when he was last at Person B's residence. (Tr. 194).

This dispute need not factor into my analysis as the undisputed facts and testimony sufficiently establish a basis for finding Respondent Guilty of the charges set forth in Specification No. 2. Respondent's testimony outlined above clearly sets forth that Respondent viewed these two individuals as old friends with whom he interacted at least semi-regularly and communicated with through message as recently as late 2013.

As a police officer, Respondent is obligated not to associate with individuals reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities. Based on Respondent's own admissions, it is clear that Respondent had ample information to support a reasonable belief that Persons A and B were engaging or had engaged in criminal activity. Respondent himself had searched for Persons A and B in 2011 and 2012 respectively utilizing Department computer systems. There would have been no reason to do so if Respondent did not believe these individuals might be engaged or had been engaged in some sort of unlawful activity. Such searches gave Respondent access to Persons A and B's entire criminal histories, although Respondent contends he did not read through the results in full. Respondent further admitted that he had heard that Person B had been arrested but opted to make no further inquiries while still associating with him from time to time. (Tr. 141). The Department cannot now excuse Respondent's association with Person B for the simple reason that he chose not to find out additional information that would confirm that he was indeed associating with a criminal.

Moreover, even after he was questioned by federal agents and was made expressly aware that Persons A and B were the subject of a criminal investigation, he spoke with Person B when he saw him in his the neighborhood, asking him how he was doing

and even explaining that Respondent would need to "stay under the radar" due to some issues at work. (Tr. 144, 188).

Based on Respondent's own admissions and explanations, I conclude that Respondent continually associated with Person A and Person B while being well aware of the high likelihood that they had been engaged in or were engaging in criminal activityAccordingly, Respondent is found guilty of the charge set forth in Specification No. 2.

Specification No. 3: Failure to Submit for Drug Screening with Cause

There is no dispute that Respondent refused to submit to a drug test when ordered to do so by Klausner on December 31, 2013. In fact, Klausner's and Respondent's accounts of their exchange that day are largely identical. Respondent testified that he did not fully comprehend the implications of not submitting for the test because of residual stress from the federal questioning and his tour in Afghanistan. (Tr. 167). He insisted he would have passed the Dole test had he taken it. (Tr. 196).

Respondent argues that he should be found Not Guilty of the charge because there is a discrepancy between the Department's two witnesses as to why Respondent was ordered to submit to the drug test. (Tr. 228). This argument fails as there is simply no such discrepancy. Although Detective Fernandes testified that Respondent's admission that he was at Person B's home while others were smoking marijuana was a "problem" due to Respondent's position as a police officer, he also stated decisively that no dole was ordered until the Department had confirmation that Respondent had failed his drug screening in Afghanistan. (Tr. 45, 67). Klausner told Respondent on December 31,

2013, that the FBI was not involved with the drug test order and testified that he had been under the impression that Respondent was ordered to submit to a drug test because of the positive drug test in Afghanistan. (Tr. 92, 97). It is clear from the testimony that Fernandes and Klausner actually agree that the drug test was ordered by the Department once it was known that Respondent had failed a military drug test earlier that year.

Patrol Guide 205-30 provides that drug screening tests for cause will be administered when there is reasonable suspicion to believe that a member of the service is illegally using drugs or controlled substances. Reasonable suspicion, according to the Patrol Guide, "exists when evidence or information, which appears reliable, is known to the police supervisor and is of such weight and persuasiveness as to make the supervisor . . . reasonably suspect that a member of the service is illegally using drugs/controlled substances." A prior positive drug test in the same year that was not self-reported to the Department by Respondent certainly would have created reasonable suspicion that Respondent might have been continuing to use drugs.

Moreover, I credit the testimony of Fernandes and Klausner because both testified in a straight-forward manner and neither was shown to have any personal animosity toward Respondent or any other motive to lie.

Accordingly, I find the Department's order for the drug test to have been lawful and for cause. As Respondent readily admitted that he refused to submit to the test despite being given multiple opportunities by Klausner and being made aware that he would be suspended for failure to submit, I find him Guilty of the charge set forth in Specification No. 3.

Specification No. 4: Prohibited Conduct

The fourth Specification charges Respondent with engaging in conduct prejudicial to the good order, efficiency or discipline of the Department when he tested positive for marijuana following a drug screening test conducted while serving in the U.S. Armed Forces in Afghanistan in May 2013. The drug test was ordered by Respondent's Commanding Officer in the U.S. Army after marijuana was found in Respondent's bunk in a small Ziploc bag. (Tr. 199-200). Respondent's bunkmate tested negative for marijuana and Respondent admitted the bag belonged to him. (Tr. 197-98). When questioned about the bag, Respondent testified, "this bag it wasn't like a lot of marijuana; it was like crumbs, and it was mixed with, like tobacco." (Tr. 197). Respondent testified that he was "shocked" to fail the drug test and believed this marijuana might have come from the cigars he bought from Afghani soldiers. (Tr. 112-14). However, Respondent does not dispute the positive result of the test.

I do not find Respondent's testimony as to the possibility of laced cigars to be credible. He proffers no evidence beyond his own surmise and conjecture. Respondent must meet the burden of proving the affirmative defense of involuntary ingestion of marijuana by a preponderance of the credible evidence. *See Green v. Sielaff, 603 N.Y.S.2d 156 (First Dep't 1993).* Respondent has failed to satisfy this standard.

The substantiated facts before this Tribunal are that marijuana was found in Respondent's bunk, that Respondent tested positive for marijuana, and that Respondent subsequently pled guilty when charged with wrongful use of marijuana in an Article 15 military administrative proceeding. *(DX-1).* The cutoff level for marijuana used by the

U.S. Department of Defense is 15 nanograms per milliliter of urine (15ng/mL). *(Court Exhibit 1)* (Tr. 215-16). The same cutoff is used by the Department.[2]

As the results of this test also would have resulted in a positive result if administered by the Department, I find Respondent Guilty of the charge set forth in Specification No. 4.

Specification No. 5: Failure to Notify the Department of Participation in a Federal Investigation

It is uncontested that Respondent did not notify the Department when he received a voicemail message from an individual identifying himself as an FBI agent, or at any point after federal agents arrived at his home to question him about his association with Person A and Person B. It is also uncontested that the Department was aware of the ongoing federal investigation of Respondent and that two members of IAB arrived at Respondent's home approximately three to four hours after the departure of the federal agents.

Respondent testified that he believed the voicemail to be a joke and that he thought if it were legitimate, the agents would have reached out to him through One Police Plaza. (Tr. 192). Respondent further argued that there was no reason to notify IAB, because they arrived at his home soon after the federal questioning and were working concurrently with the FBI in coordinating investigations. (Tr. 232-33, 235-36).

I find that Respondent's arguments fail given the circumstances and the requirements set forth in the Patrol Guide. Patrol Guide 212-32 provides that "when an off-duty uniformed member of the service is at an unusual police occurrence to which the

[2] The Department has largely shifted to hair analysis and most recent cases cite the cutoff of 10 picograms per 10 milligrams of hair.

uniformed member of the service is . . . a participant," [the member] must request the response of a patrol supervisor of the precinct of occurrence. Federal agents contacting a police officer by phone or arriving at an off-duty police officer's residence for questioning certainly can be characterized as "an unusual police occurrence." As such, Respondent was obligated to notify the Department of these contacts with federal agents, whether or not he thought the Department knew about the contact.

Moreover, Patrol Guide 207-21 provides that, "[a] member of the service having or receiving information relative to an allegation of corruption or other misconduct, has the responsibility to report such information directly to the Internal Affairs Bureau, Command Center." The federal agents from the FBI Corruption Unit who interviewed Respondent alleged that he had been involved in corruption and/or misconduct either expressly or by failing to reveal information about Person A and Person B. As such, Respondent should have notified IAB as soon as the questioning ended.

I give no weight to Respondent's argument that he failed to notify the Department of the voicemail because he believed it to be a prank. As a nine-year member of the Department, Respondent should have taken additional steps to verify that a voicemail from someone purporting to be a federal agent was legitimate, whether or not he had a good faith belief that it might be a prank. Instead, not only did he not notify the Department of this contact, he opted to ignore the message entirely. Such action cannot be justified given Respondent's position as a member of the Department.

Respondent's argument that he was under no obligation to report the federal agents coming to his home to the Department because the federal agents were working in tandem with IAB also fails. It is undisputed that three to four hours elapsed between the

end of the federal questioning and the IAB members arriving at Respondent's residence. Prior to the arrival of IAB at his home, Respondent was not aware the Department had knowledge of the federal investigation. It is understandable that Respondent may have been distressed after the federal agents left his home but that does not excuse Respondent's failure to notify the Department of something as serious a federal questioning. There was a three to four hour window in which he could have and should have done so. Instead, he made no efforts to provide any notification to the Department.

Accordingly, Respondent is found Guilty of the charge set forth in Specification No. 5.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on January 9, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found Guilty of engaging in conduct prejudicial to the good order, efficiency, or discipline of the Department by virtue of testing positive for marijuana pursuant to a drug screening test conducted while Respondent was serving in the United States Army in May 2013. The Department has a strong interest and a clearly enunciated policy in not employing persons who ingest and possess illegal drugs like marijuana. *See Disciplinary Case No. 3687/11, signed March 12, 2012 (eleven-year police officer with one prior adjudication was dismissed for ingesting and possessing*

marijuana); Disciplinary Case No. 85226/09, signed November 11, 2011 (twenty-six-year lieutenant with no prior disciplinary record was dismissed from the Department for ingesting and possessing marijuana). This Court rejects Respondent's argument that the positive test result may have been the result of smoking laced cigars as he proffered no evidence in support of this theory. *See Disciplinary Case No. 81455/05, signed August 3, 2007, (twenty-three-year member was terminated for possessing and ingesting marijuana, the Deputy Commissioner of Trials and the Police Commissioner did not find Respondent's claim that he unknowingly ingested his wife's marijuana-laced meatballs to be credible), affirmed, Ciofalo v. Kelly, 893 N.Y.S.2d 552 (2010).*

Respondent is also found Guilty of refusing an order to submit to a lawfully ordered Dole test. The penalty of dismissal from the police service has been consistently imposed upon members who have refused to comply with lawful orders requiring them to submit to Dole testing. *See Disciplinary Case No. 78236/02, signed April 27, 2013 (thirteen-year member with no prior disciplinary record was found Guilty of failing to submit to a Dole test issued for cause and was dismissed from the Department).*

Accordingly, for these reasons and noting that Respondent has additionally been found guilty of (i) utilizing a Department computer to make a computer query that was not related to official Department business; (ii) knowingly associating with two individuals who are reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities; and (iii) failing to notify the Department, as required,

after having been questioned by the FBI regarding his involvement with subjects in a federal investigation, I recommend that Respondent be DISMISSED from his position as a police officer with the New York City Police Department.

Respectfully submitted,

Claudia Daniels-DePeyster
Assistant Deputy Commissioner - Trials

APPROVED
JUN 16 2015
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER LASEAN WIGGINS
TAX REGISTRY NO. 940856
DISCIPLINARY CASE NO. 2014-11090

In 2009, Respondent received an overall rating of 3.0 "Competent" on his annual performance evaluation. In 2010, he received a rating of 3.5 "Above Competent;" and in 2011, he received a rating of 4.0 "Highly Competent." Respondent has received one Meritorious Police Duty medal in his career to date. Respondent has no prior formal disciplinary record.

[redacted]

For your consideration.

Claudia Daniels DePeyster

Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials